

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICHARD J. TINDAL,

Plaintiff,

DECISION AND ORDER

04-CV-6312L

v.

GLENN S. GOORD, et al.,

Defendants.

This Court referred all pretrial matters in this civil rights action to United States Magistrate Judge Marian W. Payson pursuant to 28 U.S.C. § 636(b). In his original complaint and an amended complaint, Tindal claimed his Eighth Amendment right to be free from cruel and unusual punishment was violated because certain employees of the New York State Department of Correctional Services engaged in deliberate indifference to his medical needs.

Several motions were filed and Magistrate Judge Payson issued a single ruling on September 9, 2006, entitled Decision and Order/Report and Recommendation. In that ruling, Magistrate Judge Payson recommended denial of plaintiff's motion to file a second amended complaint raising the same basic claim but at a new correctional facility involving different defendants and different circumstances. Magistrate Judge Payson also denied Tindal's motion to appoint counsel and his motion to compel. Tindal duly filed objections to the Report and Recommendation of Magistrate

Judge Payson, and he appealed from her order denying appointment of counsel and denying the motion to compel.

I have carefully reviewed Magistrate Judge Payson's Decision and Order/Report and Recommendation (Dkt. #128) as well as plaintiff's objections, with attachments, (Dkt. #129, as well as the original motion papers filed by plaintiff, including Dkt. ##96, 108 and 111.


I accept the Report and Recommendation of Magistrate Judge Payson recommending denial of the motion to file a second amended complaint. I agree with Magistrate Judge Payson's analysis of the law and her conclusion that although under FED. R. CIV. P. 15(a), motions to amend are generally freely granted, there are circumstances that such relief should not be granted. As Magistrate Judge Payson noted, this case has been pending for several years and discovery is virtually complete. Plaintiff has already been deposed concerning individuals involved at the Elmira Correctional Facility, which was the basis of the original complaint, as well as similar alleged activities by other defendants at a new facility to which Tindal had been transferred. There must be some end to this. Managing a case involving several different incidents, involving different defendants at different institutions creates the potential for jury confusion in the prosecution of what are essentially multiple actions.

I, therefore, adopt and accept the Report and Recommendation of United States Magistrate Judge Marian W. Payson and deny plaintiff's motion to file a second amended complaint. I believe Magistrate Judge Payson has correctly analyzed the relevant law on the subject and the facts support her decision denying the requested relief.

Concerning the other motions, Tindal has appealed the decision to deny appointment of counsel and to deny plaintiff's motion to compel. Plaintiff has failed to demonstrate that Magistrate

Judge Payson's order was clearly erroneous. I believe Magistrate Judge Payson's decisions concerning these motions are supported by the record.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
October 19, 2006.